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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/705,589

11/10/2003

William B. Rose

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EXAMINER

NGUYEN, CHI Q

ART UNIT

PAPER NUMBER

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/705,589	<b>Applicant(s)</b> ROSE, WILLIAM B.	
	<b>Examiner</b> CHI Q. NGUYEN	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-15,26-29,31-34,54,65 and 66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-15,26-29,31-34,54,65 and 66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This Office action is in response to applicant's amendment filed on 3/14/2008.

#### ***Status of Claims***

Claims 1-4, 6-15, 26-29, 31-34, 54, 65-66 are pending.

Claims 5, 16-25, 30, 35-53, 55-64, and 67-68 have been cancelled.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/14/2008 has been entered.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 65 is rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 6,681,530 to Givens.

Givens discloses in Fig. 8, a one-piece flashing for directing water away from a building foundation comprising: a generally vertical section having a first predetermined width; first 116 and second 117 portions of said generally vertical section disposed at an

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angle with respect to one another; an angled section extending downwardly from said generally vertical section at an obtuse angle therewith and having a second predetermined width, wherein said angled section includes first 119 and second 121 portions disposed at an obtuse angle with respect to one another; and wherein said generally vertical section and said angled section are unitary and constructed from a single sheet of composite material (see cols. 9-10, lines 66-14, respectively and cols. 6-7).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-15, 26-29, 31-34 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,681,530 to Givens.

Claims 1, 54:

Givens discloses in Fig. 8, a one-piece flashing for directing water away from a building foundation comprising: a generally vertical section having a first predetermined width; first 116 and second 117 portions of said generally vertical section disposed at an angle with respect to one another; an angled section extending downwardly from said generally vertical section at an obtuse angle therewith and having a second predetermined width, wherein said angled section includes first 119 and second 121 portions disposed at an obtuse angle with respect to one another; and wherein said

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generally vertical section and said angled section are unitary and constructed from a single sheet of composite material (see cols. 9-10, lines 66-14, respectively and cols. 6-7). Givens discloses the basic structures for the flashing as stated above but does not disclose expressly the second predetermined width is substantially larger than the first predetermined width. However, this feature would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to have such a different width for desirable application, e.g. encompassing a larger area.

Furthermore, applicant has not disclosed the criticality of this feature.

Claims 26-27:

Givens discloses the basic structures for the unibody diverter stated above and further comprising the generally vertical section of said unibody diverter is generally L-shaped but does not disclose expressly a system comprising a first, a second, a third flashings. It would have been an obvious matter to one having ordinary skill in the art at the time the invention was made to have more than one flashing for the system, since it has been held the mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claim 2:

Wherein said first and second portions are disposed at a generally right angle with respect to one another (Fig. 8).

Claims 3-4, 6-7, 9, 28-29, and 31-32:

Givens discloses the basic structures for the flashing as stated above but does not disclose that the vertical section has a width of approximately 10 inches, angled section

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has width of approximately 30 inches, the first and second portions of said vertical section have a predetermined length of approximately 24, 27, or 44 inches, wherein said angled portion extends downwardly from said vertical portion at a grade of approximately 20%, and wherein said vertical section has a predetermined thickness of approximately 0.045 inches. However, these features would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to have a specific dimension for its desirable application. Furthermore, applicant has not disclosed the criticality of these features.

Claims 10, 11:

Givens discloses the basic structures for a unibody diverter as stated above and further comprising the unibody diverter is made out of plastic (see col. 6, line 63) but does not disclose expressly wherein said angled portion comprises rubber. However, this feature would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to have such the angled portion comprises rubber for easily fit and cover air gap. Furthermore, applicant has not disclosed the criticality of this feature.

Claims 12-13, 33-34:

Wherein said vertical section includes an attachment system and wherein said attachment system includes at least one fastener 30-32 (see col. 6, line 18).

Claims 14-15:

Givens discloses the basic structures for one-piece flashing as stated above and further disclose a fastener system including nail and hole (30-32- see col. 6 line 18) but

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does not disclose expressly wherein said fastener comprises at least one bolt or at least one threaded fastener. However, this feature would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to have such a threaded fastener e.g. bolt for a better securement because the threaded bolt fastener does not back-out. Furthermore, applicant has not disclosed the criticality of this feature.

Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,681,530 to Givens in view of US Pat. No. 6,199,326 to Mayle.

Givens discloses in Fig. 8, a one-piece flashing for directing water away from a building foundation comprising: a generally vertical section having a first predetermined width; first 116 and second 117 portions of said generally vertical section disposed at an angle with respect to one another; an angled section extending downwardly from said generally vertical section at an obtuse angle therewith and having a second predetermined width, wherein said angled section includes first 119 and second 121 portions disposed at an obtuse angle with respect to one another; and wherein said generally vertical section and said angled section are unitary and constructed from a single sheet of composite material (see cols. 9-10, lines 66-14, respectively and cols. 6-7). Givens discloses the basic structures for the flashing as stated above but does not disclose expressly a through-cut disposed on said vertical portion and said angled portion. Mayle discloses in Figs. 1 and 4 a diverter 10 comprising a vertical portion 81/82 and an angled portion 83/84 that extends downwardly and away from the vertical portion 81/82 and further comprising a through-cut 86a/86b. In view of Mayle, it would

have been obvious to one having an ordinary skill in the art at the time the invention was made to provide Givens a cut through from the vertical portion to the angled portion in order to enlarge in size thus providing a fully cover for a corner building.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-4, 6-15, 26-29, 31-34, 54 and 65-66 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272-6847. The examiner can normally be reached on Monday-Friday from 7:30 am-4:00 pm.

If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached at (571) 272-6777.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairdirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197.

/C. Q. N./  
Examiner, Art Unit 3635



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/Jeanette E Chapman/  
Primary Examiner, Art Unit 3633